

#13

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37CFR 1.137(b)

Docket N°  
1578

First named inventor: Sharon Durst

Application N°: 09/884,656

Group Art Unit: 1772

Filed: June 20, 2001

Examiner: Jane Rhee

Title: ENHANCED BALLISTIC PROTECTION MATERIAL

Attention: Office of Petitions  
Commissioner for Patents  
Box DAC  
P.O. Box 1450  
Alexandria, VA 22313-1450

The above-identified application became abandoned for failure to file a timely and proper reply to the Office action mailed on March 25, 2002, which set a 3-month period for reply. The abandonment date of this application is June 26, 2002.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

1. Petition fee

- ☒ Small entity - fee \$ 650.00 (37 CFR 1.17(m))  
☐ Small entity statement enclosed herewith.  
☐ Small entity statement previously filed.  
☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of a check  
(Identify type of reply)

- ☐ has been filed previously on \_\_\_\_\_.  
☒ is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_

- ☐ has been paid previously on \_\_\_\_\_.  
☐ is enclosed herewith.

Adjustment date: 07/09/2003 AWONDAF1  
06/10/2003 AWONDAF1 00000030 09884656  
02 FC:2452 -55.00 OP

07/09/2003 AWONDAF1 00000012 09884656

01 FC:2453

650.00 OP

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3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$\_\_\_\_\_ For a small entity or \$\_\_\_\_\_ For other than a small entity) equivalent to the number of months from abandonment to the filing of this petition is enclosed herewith.

4. Statement. The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

Where a petition under 37 CFR 1.137(b) is filed:

(1) more than three months from the date the applicant is first notified that the application is abandoned, explain (on an attached sheet) in detail the cause of the delay in filing the petition;

(2) more than one year from the date of abandonment, explain (on an attached sheet) in detail how the delay discovering the abandonment status occurred and indicate the date that applicant first became aware of the date of abandonment.

6-30-93

Date

  
Signature

(916) 485-5000  
Telephone Number

Mark C. Jacobs, 24043

3033 El Camino Avenue

Sacramento, CA 95821

Enclosures:

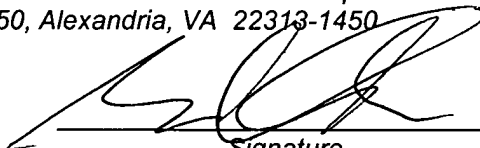
- ☐ Reply
- ☒ Fee Payment in the amount of \$650.00
- ☐ Terminal Disclaimer Form
- ☐ Small Entity Status Form

CERTIFICATE OF MAILING [37 CFR 1.8(a)]

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Box DAC, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

6-30-93

Date

  
Signature

Mark C. Jacobs



MARK C. JACOBS, ESQ.  
3033 EL CAMINO AVENUE  
SACRAMENTO, CA 95821



Paper No. 12

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JUN 20 2003

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ON PETITION

In re Application of  
Durst et al.  
Application No. 09/884,656  
Filed: June 20, 2001  
Attorney Docket No. 1578

This decision concerns the June 9, 2003 "Petition to Revive Patent" which asserts timely response to an Office action and is being properly treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in this application.

The petition is **DISMISSED**.

A non-final Office action was mailed on March 25, 2002 ("3/25/02 Office Action"), setting forth a 3-month shortened statutory reply period. No response was filed on or before June 25, 2002 and no extension of time under 37 CFR 1.136(a) was obtained. The application was held abandoned as of June 26, 2002.

The instant petition asserts that a reply to the 3/25/02 Office Action was submitted to the Examiner by facsimile on May 31, 2002, and again by mail on June 7, 2002 ("6/7/02 Response"), implying that the application should not be held abandoned.

A correspondence in response to an Office action and deposited as first class mail with the USPS in accordance with the procedure set forth in 37 CFR 1.8(a) is considered timely filed in the PTO even if received by the PTO subsequent to the reply period given in that Office action. However, when a correspondence in response to an Office action is not received by the PTO, as is in the instant case, it may still be considered timely filed, provided that the party who mailed the correspondence files a petition:<sup>1</sup>

- (1) informing the PTO of the previous mailing of the correspondence promptly after becoming aware that the PTO has no evidence of receipt of the correspondence;<sup>2</sup>
- (2) supplying a duplicate of the previously mailed correspondence showing the

<sup>1</sup> See 37 CFR 1.8(b).

<sup>2</sup> This condition is considered met, in that, counsel apparently informed the Examiner on 10/23/02 of the previous mailing of the reply.

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original §1.8(a) certificate of mailing;<sup>3</sup>

- (3) including a statement **attesting, on a personal knowledge basis** or to the satisfaction of the Commissioner, to the previous timely mailing.<sup>4</sup>

The petition meets the above requirements, and thus establishes that a response to the 3/25/02 Office Action was timely mailed, i.e., mailed with a June 7, 2002 Certificate of Mailing.

Unfortunately, while the Office does not dispute the assertion that a response to the 3/25/02 Office Action was timely mailed, albeit not received in the PTO, the Examiner has reviewed the 6/7/02 Response re-submitted by facsimile on 10/23/02, and determined that the response did not place the application in condition for allowance. Therefore, the application is, nonetheless, properly held abandoned as of June 26, 2002 because the timely filed amendment was not fully responsive to the 3/25/02 Office action, and was not entered.<sup>5</sup> The petition is therefore dismissed, and the holding of abandonment in this application is not withdrawn.

Given that the petition refers to "unintentional abandonment," a petition to revive the application under 37 CFR 1.137(b) should be promptly filed to revive this application, by including:<sup>6</sup>

-the \$650 petition fee (small entity);<sup>7</sup>

-a statement that the entire delay in submitting a proper reply to the 3/25/02 Office Action from its due date until the filing of a grantable §1.137(b) petition was unintentional;

and should be addressed as follows:

by mail/by hand: Commissioner for Patents  
USPTO  
Attn: Office of Petitions  
Crystal Plaza Four, Suite CP4-3C23  
2201 South Clark Place  
Arlington, VA 22202

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<sup>3</sup> The PTO file for this application includes a copy of counsel's 6/7/02 (Certificate of Mailing date) response to the 3/25/02 Office Action, submitted by facsimile on 10/23/02.

<sup>4</sup> Contained in petition.

<sup>5</sup> MPEP section 711.02(a) (Rev. 1, Feb. 2003).

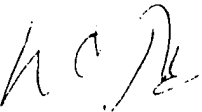
<sup>6</sup> The Notice of Appeal and the \$160 filing fee enclosed with the instant petition satisfy the "reply" requirement of 37 CFR 1.137(b)(1).

<sup>7</sup> The instant petition asserts unintentional abandonment but only encloses a \$55 petition fee, which is the fee amount for a petition under 37 CFR 1.137(a) based on unavoidable delay.

by fax: (703) 308-6916  
Attn: Office of Petitions

Finally, the Office acknowledges receipt with the petition of a \$55 payment. Since no fee is required for a petition under 37 CFR 1.181, the \$55 payment will be credited toward the §1.137(b) petition should one be filed.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.



RC Tang  
Petitions Attorney  
Office of Petitions